As the sub-tenants have not been served, or heard, the judgment will not be enforceable as against them and a declaration to that effect must be embodied pursuant to Section 26.

As both parties have succeeded in part they should bear their own costs throughout.

Order accordingly.

Solicitors : *Hilborne & Murphy; S. C. Goho & Co.*

V. SOLAI v. MARIAYEE

[O. C. J. (Bellamy J.) October 15, 1954]

[K. L. — Civil Suit No. 20 of 1954]

Guardianship of infant — Procedure — Whether proceedings by way of Originating Summons or Suit — Civil Law Enactment, 1937, s. 6(i) — Guardianship of Infants Acts, 1886 & 1925 — Religion and customs of parties.

The plaintiff, a Hindu father, instituted this suit for an order for the custody of his 2 infant children alleged to be detained by his Hindu wife. A question of procedure arose as to whether proceedings of the kind ought to be taken by way of Originating Summons and not by a Suit.

Held: (1) there being no other written law which applies in the Malay States regarding the religion and customs of parties concerned, the Guardianship of Infants Acts must be followed; (2) the proper procedure where there is no action or other proceedings pending is for an application to be made by Originating Summons in the matter of the infants.

CIVIL SUIT.

Both parties in person.

Cur. Adv. Vult.

Bellamy J. : — This is a suit instituted by a Hindu father for an order for the custody of his two infant children alleged to be detained by the defendant, a Hindu woman, who is the plaintiff's wife and the mother of the children.

A question of procedure (upon which, as far as I am aware, there has been no reported decision in this Court although the question must have arisen before) immediately arises whether proceedings of the kind must be taken by way of originating summons under section 472 of the Federated Malay States Civil Procedure Code and not by a suit.

The answer is, I think, to be found in section 6(i) of the Civil Law Enactment, 1937 which provides :—

"In all cases relating to the custody and control of infants the law to be administered shall be the same as would have been administered in like cases in England at the commencement of this enactment regard being had to the religion and customs of the parties concerned unless in any case other provision is or shall be made by any written law."

There is no other written law which applies in the Malay States, and it follows that English law as it was at the 12th March, 1937, the date of the commencement of the Civil Law Enactment, 1937, applies to such cases.

The relevant English law is to be found in the Guardianship of Infants Acts, 1886 and 1925. Under these Acts applications are made to the Court in the manner laid down by rules made under the Guardianship of Infants Act, 1886 (section 11); and the procedure is governed in the High Court by Order 55, rule 2(12) and Order 55A of the Rules of the Supreme Court. Order 55A admits of any application either under the Act of 1886 or under the Act of 1925 by an originating summons in the matter of the infant where there is no action of other proceeding pending. It does not appear to admit of any such proceeding being taken by a suit.

In my view, therefore, no suit will lie here for the custody of an infant. The proper procedure, where there is no action or other proceedings pending (as in this case), is for an application to be made by originating summons in the matter of the infant. It will be noted that this procedure is in line with the procedure in the Settlements where under the Guardianship of Infants Ordinance (Chapter 50) of the Straits Settlements the procedure is regulated by Order 52, rule 23 of the Rules of the Supreme Court, 1934, clause (1) of which is taken from the English Order 55A, rule 2.

It follows that in my view these proceedings have been misconceived. The suit is dismissed, with costs, without prejudice to any further proceedings which the father might take in proper form.

Suit dismissed.

GNG ENG HWOO v. REGINA

[A. Cr. J. (Whitton J.) October 15, 1954]

[Singapore — Magistrate's Appeal No. 148 of 1954]

Dangerous Drugs Ordinance, 1951, s. 30(7) — Meaning of "owner" — Criminal Procedure Code (Cap. 21), s. 296 — Order — Whether Magistrate's ruling as to ownership within s. 30(7) Dangerous Drugs Ordinance amounts to an order.

In this case the proceedings started with the prosecution of another Chinese for alleged unlawful possession on board the motor sampan of raw opium in contravention of the Dangerous Drugs Ordinance. That Chinese was acquitted but the Magistrate held that an offence under the Ordinance had been committed, and under s. 30(3) asked the owner to show cause why the vessel should not be forfeited. After hearing the evidence of